

FILED

AUG 23 1993

U.S. DISTRICT COURT

IN THE
DISTRICT COURT OF THE UNITED STATES
OCTOBER TERM, 1993

C & A CARBONE, INC.,
RECYCLING PRODUCTS OF ROCKLAND, INC.,
C & C REALTY, INC., and
ANGELO CARBONE,

Petitioners,

v.

TOWN OF CLARKSTOWN,

Respondent.

On Petition of Carbonate to the Supreme Court,
Appellate Division, Second Department
of the State of New York

STATE OF ALABAMA, OFFICE OF THE
SOLICITOR GENERAL, AUTHORITY
OF THE CITY OF MONTGOMERY, ALABAMA
IN SUPPORT OF RESPONDENT

CHARLES E. JOHNSON *
100 Columbia Street, South
Montgomery, Alabama 36104
205 263-2000
Counsel for Respondent

*Counsel at Large

BEST AVAILABLE COPY

TABLE OF CONTENTS

	Page
— TABLE OF AUTHORITIES	ii
INTEREST OF <i>AMICUS CURIAE</i>	1
SUMMARY OF ARGUMENT	5
ARGUMENT	6
I. PUBLIC SERVICE WASTE COLLECTION AND REMOVAL SYSTEMS ARE TRADI- TIONAL FUNCTIONS OF LOCAL GOVERN- MENT, JUSTIFIED AS HARM PREVEN- TION MEASURES UNDER THE TRADI- TIONAL POLICE POWER OF THE STATES..	6
II. CLARKSTOWN'S ORDINANCE IS SUB- STANTIALLY SIMILAR TO REGULATIONS ALREADY UPHELD BY THIS COURT AGAINST TAKINGS AND DUE PROCESS CHALLENGES	8
III. FOR THE PURPOSE OF ANALYSIS, THE MSW WASTE INDUSTRY MAY BE DI- VIDED INTO DISCRETE SEGMENTS	9
IV. CARBONE'S RECYCLING OR RESOURCE RECOVERY OPERATION IS STRICTLY LOCAL AND DOES NOT IMPACT INTER- STATE COMMERCE	10
V. THE MOTIVES OF INDIVIDUAL MEMBERS OF LEGISLATIVE BODIES IN PASSING LAWS ARE NOT USEFUL EXTRINSIC AIDS TO CONSTRUCTION, AND ARE UNI- FORMLY DISREGARDED FOR INTERPRE- TIVE PURPOSES	12
CONCLUSION	13
APPENDIX A	1a
APPENDIX B	37a

TABLE OF AUTHORITIES

CASES	Page
<i>Aldridge v. Williams</i> , 3 How (44 U.S.) 9 (1845).....	12
<i>California Reduction Co. v. Sanitary Works</i> , 199 U.S. 306 (1905)	8, 9, 13
<i>City of Philadelphia v. New Jersey</i> , 437 U.S. 617 (1978)	6, 7, 9
<i>Duplex Printing Co. v. Deering</i> , 254 U.S. 443 (1921)	12
<i>Fort Gratiot Sanitary Landfill, Inc. v. Michigan Dept. of Nat. Res.</i> , 112 S.Ct. 2019 (1992), 119 L.Ed.2d 121, — U.S. —	7
<i>Gardner v. Michigan</i> , 199 U.S. 235 (1905)	8, 13
<i>H.P. Hood & Sons, Inc. v. DuMond</i> , 336 U.S. 525 (1949)	7
<i>Hipolite Egg Co. v. U.S.</i> , 220 U.S. 45 (1911)	11
<i>Illinois General Elec. Co.</i> , 683 F.2d 206 (CA 1982), cert. denied, 461 U.S. 913	13
<i>Waring v. Mobile</i> , 8 Wall. (75 U.S.) 110 (1869)....	11
STATUTES	
Ala. Code § 11-89A-01	1
OTHER AUTHORITIES	
U.S. Constitution, Amend. 5 & 14	8
McQuillin, Municipal Corporations, § 24.250 (3rd Ed.)	6
Sutherland Statutory Construction § 48.17 (4th Ed.)	12

IN THE
Supreme Court of the United States

OCTOBER TERM, 1993

No. 92-1402

C & A CARBONE, INC.,
 RECYCLING PRODUCTS OF ROCKLAND, INC.,
 C & C REALTY, INC., and
 ANGELO CARBONE,

v. *Petitioners,*

TOWN OF CLARKSTOWN,
Respondent.

On Writ of Certiorari to the Supreme Court,
 Appellate Division, Second Department
 of the State of New York

**BRIEF AMICUS CURIAE OF THE
 SOLID WASTE DISPOSAL AUTHORITY
 OF THE CITY OF HUNTSVILLE, ALABAMA
 IN SUPPORT OF RESPONDENT**

INTEREST OF AMICUS CURIAE

The Solid Waste Disposal Authority of the City of Huntsville, located in Madison County, Alabama (hereinafter "the Authority"), is a public corporation of the State of Alabama organized pursuant to the Solid Waste Disposal Authority Act of the State, Code of Alabama, 1975, § 11-89A-01, et seq. The Authority provides waste disposal services under contract with the City of Huntsville, a municipal corporation within the State of Alabama (hereinafter the "City"), as an integral part of the City's solid waste collection and disposal system. Three

basic documents define the functions of the Authority. The documents are the City Solid Waste Ordinance establishing a comprehensive waste collection and disposal system within the City requiring mandatory delivery of all locally produced Municipal Solid Waste (MSW) to the system¹; the City Delivery Agreement under which the City is required (until the year 2014) to deliver or cause to be delivered to the Authority all acceptable waste (acceptable waste excludes certain hazardous waste) generated or occurring on local premises within the City; and the Army Contract under which the U.S. Army (the "Army") is obligated (until the year 2014) to purchase steam from the Authority, to be used to heat and cool (by steam operated compressors) Redstone Arsenal Military Reservation, located adjacent to the City. The Authority receives revenue from the sale of steam under the Army Contract, from tipping fees paid by the City, and from tipping fees paid by City franchised or licensed haulers who are required by the Ordinance as a condition of their license or franchise, to deliver all acceptable waste to the Authority². The Authority owns and operates a 695 ton per day Municipal Solid Waste (MSW) incinerator. The incinerator burns MSW, sewage sludge, and landfill gas to produce the steam which is delivered to the Army under the Army Contract. The Authority owns and operates an MSW ash monofill for the disposal of MSW combustor ash residue; an inert landfill for the disposal of inert waste such as tree limbs and construction debris;

¹ Comprehensive Waste Control or Management measures are frequently referenced to as "flow control" ordinances or regulations, particularly in connection with public financings of facilities. The concern in the financial markets is with the stream of revenue, whereas, such measures are frequently nothing more than comprehensive police power regulations of private premises, enacted pursuant to the harm prevention concern of local government under the traditional police power.

² The Solid Waste Ordinance of the City of Huntsville is included herein as Appendix A.

and a putrescible landfill for the disposal of any putrescible waste not burned in the incinerator or which is at any time in excess of incinerator capacity. The Authority also operates a voluntary curbside single family household recycling collection program which removes brown, green, clear, and blue glass; plastic soft drink bottles and milk jugs; aluminum and steel cans; newspapers and magazines; used motor oil; and dry cell household batteries, from the MSW wastestream, before it is removed from private premises by City haulers. The Authority operates a voluntary Household Hazardous Waste Collection Program under contract with the Madison County Health Department, targeted for removal of a portion of certain household hazardous material from the MSW wastestream. Included in the material sought to be separated from the MSW wastestream through the Household Hazardous Waste Program are paints and related products; pesticides, insecticides and herbicides; household cleaners and solvents; automotive batteries and petroleum products; acids; and pool and photographic chemicals. The Authority also operates a White Goods Recycling Program which removes appliances such as old refrigerators and stoves from the wastestream for scrap value. The Authority accepts all MSW generated by the publicly operated Madison County Collection System as well. Madison County also operates a voluntary recycling program, and participates with the local Health Department in the Household Hazardous Waste Program. It is fair to characterize the program resulting from the City-Authority agreement as a long term comprehensive MSW Wastestream Management Program serving the City of Huntsville and Madison County.

The City Solid Waste Ordinance is similar in all of its substantive terms to the Clarkstown Ordinance. Neither the Huntsville Ordinance or the Agreements mandate the disposal site of waste delivered to the System. The Authority is free, under the Ordinance and under the

Agreements, to dispose of waste at out of state disposal sites if it chooses.

In order to finance the acquisition and construction of its waste disposal system, the Authority has issued its Municipal Revenue Bonds. The face amount of Authority debt now outstanding from the issuance of bonds is \$121,045,000. Certain excerpts from the Final Official Statement of the Authority used in connection with the sale of its 1990 Bonds are set out in Appendix B, and contain descriptions of the basic documents with respect to the Authority's Waste Disposal System. Not surprisingly, the term "Flow Control" is used to characterize the City's Solid Waste Ordinance, because that is the language of the financial market.

The Authority thus has a vital interest in the outcome of the present case. The availability of funds for the payment of its outstanding bonds depends upon its receipt of the proceeds from the sale of steam to the Army, and from the receipt of *all* tipping fees with respect to the operation by the City of its Waste Collection and Disposal System. The ability of the Authority to operate a comprehensively managed solid waste disposal system for the City of Huntsville, and to thereby protect the Public Health and the environment, as well as to reduce the City's contingent liability for cleanup of any contamination which might be released into the environment from waste handled through its system, wherever disposed or deposited,³ depends upon the validity and enforceability under state and federal law of the wastestream security measure, the Solid Waste Ordinance. The City, by adoption of the Solid Waste Ordinance and the Agreements, has determined that a regulation which creates a managed wastestream and which displaces competition with monop-

³ Deposited is the better word. Except for the term "Political Science," surely the term "Waste Disposal" has got to be the ultimate oxymoron, for indeed there is no "Disposal" in "Waste Disposal," just as there is no "Science" in "Political Science."

oly public service is necessary to prevent the occurrence of nuisances on private premises and to protect the public health and the environment.

SUMMARY OF ARGUMENT

There is no market in MSW waste residue in Clarkstown. Clarkstown has elected to address its legitimate regulatory concerns with respect to the sanitation of private premises in Clarkstown by establishing a comprehensive public waste collection and removal system. The fact that Clarkstown's Ordinance requires mandatory delivery of useless and noisome waste to the established system does not transform Clarkstown from a health and safety regulator into either a market participant or a market regulator. Clarkstown instead is nothing more than a police power regulator and public service provider. The thrust of Clarkstown's Ordinance and of its system is the regulation of premises in Clarkstown and the prevention of the nuisances and harm that might result from the failure to remove noisome waste from those premises. The mandatory delivery provisions of Clarkstown's Ordinance force the occupants and users of premises in Clarkstown to avoid the creation of nuisances upon such premises, and in effect to do nothing more than perform their common law duty not to cause harm to their neighbors or to the community. The potential risks from any indiscriminate disposal of waste occurring or being generated upon private premises in Clarkstown represents potential harm to the public health, public safety, and to the environment of Clarkstown (and elsewhere). The potential release into the general environment of noisome and hazardous material normally found in the MSW wastestream in Clarkstown and elsewhere is a legitimate concern of Clarkstown. Clarkstown, in the exercise of its legitimate legislative discretion, has elected to create a comprehensive waste collection and removal system. The useless waste residue resulting from the operation of Carbone's legitimate recycling business on its private premises in Clarkstown is

not different in kind from similar material generated upon the various other private premises in Clarkstown. The operation of Carbone's Recyclery is local, and the concern of Clarkstown with the efficient collection of the useless MSW waste residue is local.

A state or local police power regulation which is otherwise valid, creating a comprehensive collection and removal system as a means of addressing legitimate concerns for sanitation of local premises, should be considered strictly local, and should not be measured by this Court against the strictures of the Dormant Commerce Clause.

ARGUMENT

I. PUBLIC SERVICE WASTE COLLECTION AND REMOVAL SYSTEMS ARE TRADITIONAL FUNCTIONS OF LOCAL GOVERNMENT, JUSTIFIED AS HARM PREVENTION MEASURES UNDER THE TRADITIONAL POLICE POWER OF THE STATES.

"The gathering of garbage is not a trade, business, or occupation, but it is a public duty, to be performed by a city in a manner that will best promote the health of the inhabitants. Municipal corporations frequently perform the service of collecting and removing all garbage, trash, and similar substances, and prohibit any other persons from engaging in that business. . . . (A municipality) may provide that all scavenger work within it be done by a person appointed by it and prohibit anyone else from engaging in such work." *McQuillin, Municipal Corporations*, § 24.250 (3rd Ed.). The collection and removal of all noisome waste occurring or generated upon private premises is a traditional function of local government, justified under the harm prevention aspect of the police power. The harm sought to be prevented here and the legitimate local governmental concern of Clarkstown is the contamination of local premises in Clarkstown. In that respect this case is unlike *City of Philadelphia v. New Jersey*, 437 U.S. 617 (1978), where the harm preven-

tion claimed as a justification for the regulation arose ". . . after its disposal in landfill sites." *Id.* at 629. It was conceded by New Jersey that "there (was) no basis to distinguish out-of-state waste from domestic waste." *Id.* at 629.

Mandatory participation in waste collection systems, such as is required by the Clarkstown Ordinance, is justified under the police power as nothing more than a requirement that each owner of premises meet his responsibility not to harm his neighbor or the public interest by creating and maintaining the nuisance which would necessarily result from his failure to carry out his or her common law duty of harm prevention.

This is not a case of Clarkstown using the guise of a police power regulation to advance its own commercial interest. There is no commercial market with respect to waste, such as the useless residue generated upon Carbone's premises, until Clarkstown places the consolidated waste removed from the various premises in Clarkstown into the market. As pointed out in *Fort Gratiot v. Michigan*, — U.S. —, 112 S. Ct. 2019, 2023 (1992):

. . . the "negative" or "dormant" aspect of the Commerce Clause prohibits states from advanc[ing] their own COMMERCIAL INTEREST by curtailing the movement of articles of commerce, *H.P. Hood & Sons, Inc. v. DuMond*, 336 U.S. 525 (1949) (emphasis added).

The first point at which Clarkstown's MSW waste becomes a part of any waste market is when it is carried from Clarkstown's transfer station to a disposal site.

	PAGE
Laws of New York	
L. 1976, c. 913	9
L. 1977, c. 425, § 6	8
L. 1979, c. 509	9
L. 1979, c. 510	9
L. 1980, c. 552, § 1	8
L. 1980, c. 552, § 1(a)	8
L. 1980, c. 552, § 1(b)	8
L. 1980, c. 552, § 1(b)(2)	8
L. 1980, c. 560	9
L. 1981, c. 932	9
L. 1982, c. 632	9
L. 1982, c. 675	9
L. 1983, c. 502	9
L. 1983, c. 513	9
L. 1983, c. 930	9
L. 1984, c. 638	9
L. 1985, c. 478	9
L. 1985, c. 670	9
L. 1985, c. 697	9
L. 1985, c. 797	9
L. 1986, c. 627	9
L. 1986, c. 840	9
L. 1986, c. 936	9
L. 1987, c. 71	9
L. 1987, c. 485	9
L. 1987, c. 747	9
L. 1987, c. 773	9
L. 1988, c. 70, § 2	12
L. 1988, c. 627	9
L. 1988, c. 665	9
L. 1988, c. 667	9
L. 1988, c. 670	9
L. 1989, c. 80	9
L. 1989, c. 726	9

	PAGE
L. 1991, c. 369	10
L. 1991, c. 540	10
L. 1991, c. 569	9-10, 11
L. 1991, c. 631	10
L. 1992, c. 252	10
L. 1992, c. 350	10
L. 1992, c. 369	10
L. 1992, c. 391	10
L. 1992, c. 567	10
L. 1992, c. 629	10
Other States	
Colo. Rev. Stat. § 30-20-107	11
Conn. Gen. Stat. § 22A-220A	11
Del. Code Ann. tit. 7 § 6406 (31) (1991)	11
D.C. Code § 6-507	11
Fla. Stat. §§ 403.7063, 403.713 (1986 and Supp. 1992) ..	11
Haw. Rev. Stat. § 340A-3(a)	11
Ill. Ann. Stat. c. 34 P 5-1047	11
Ind. Code §§ 36-9-31-3 & 4	11
Iowa Code § 28G.4	11
La. Rev. Stat. 30:2307 (9)	11
Me. Rev. Stat. Ann. tit. 38, § 1304-D (West 1989 and Supp. 1991)	11
Minn. Stat. § 1158.80 (1990 and Supp. 1991)	11
Miss. Code Ann. § 17-17-319	11
Mo. Rev. Stat. § 260.202	11
N.C. Gen. Stat. § 130A-294	11

	PAGE
N.D. Cent. Code §§ 23-29-06 (6) & (8)	11
N.J. Stat. Ann. §§ 13:1E-22, 48:13A-5	11
Ohio Rev. Code Ann. § 343.01 (H)(2)	11
Or. Rev. Stat. § 268.317 (3) & (4)	11
Pa. Stat. Ann. tit. 53, § 4000.303(c)	11
R.I. Gen Laws § 23-19-10(40)	11
Tenn. Code Ann. 68-211-814	11
Vt. Stat. Ann. tit. 24, §§ 2203a, 2203b	11
19 V.I.C. § 1570f	11
Va. Code Ann. § 15.1-28.01	11
Wash. Rev. Code §§ 36.58.040, 35.21.120	11
W. Va. Code S 240-2-1h	11
Wis. Stat. § 159.13 (3), (11)	11
Regulations	
Federal	
43 Fed. Reg. 26611 (1978)	5
56 Fed. Reg. 51009 (1991)	6
40 C.F.R. § 503	6
40 C.F.R. § 256.30	13
40 C.F.R. § 256.31	13
New York State	
6 NYCRR Part 360	6

	PAGE
Legislative Materials	
S. Rep. No. 988, 94th Cong., 2d Sess. (1976)	4
<i>Interstate Transport and Disposal of Solid Waste: Hearing Before the Subcomm. on Environmental Protection of the Senate Comm. on Environment and Public Works, 101st Cong., 2d Sess. (1990)</i>	4
S. 2877, 102d Cong., 2d Sess. (1992)	29
H.R. Rep. No. 1491, 94th Cong., 2d Sess. (1976), <i>reprinted in 1976 U.S.C.C.A.N. at 6238</i>	4-7, 11, 13
Staff of the House Subcomm. on Transportation and Commerce of the House Comm. on Interstate and Foreign Commerce, 94th Cong., 2d Sess., <i>Materials Relating to the Resource Conservation and Recovery Act of 1976</i>	4
Miscellaneous	
Brunner, Hubbard, Keller & Newton, <i>Closing Open Dumps</i> (EPA 1971)	5
Ferrand, <i>Records of the Federal Convention</i>	29
S. Lieberman, <i>Abandoned Trash in West Virginia is Traced to Local Carbone Site</i> , Rockland Journal-News, July 26, 1991 at B3	24
D. McClendon, <i>Radioactive Waste Is Held in Limbo</i> , Rockland Journal-News, May 17, 1993 at B1	24
Mulvey, "Cost Guidelines for the Recycling Option," <i>printed in, Selected Papers from the 1989 Conference on Solid Waste Management and Materials Policy (New York State Legislative Commission on Solid Waste Management, 1989)</i>	14

U.S. Congress, Office of Technology Assessment, <i>Facing America's Trash: What Next for Municipal Solid Waste</i> (1989)	10
U.S. Environmental Protection Agency, <i>The Solid Waste Dilemma: An Agenda For Action</i> (1989) ..	10, 12, 13, 28
Office of Solid Waste, U.S. Environmental Protection Agency <i>Characterization of Municipal Solid Waste in the United States: 1990 Update</i> (1990)	4
Office of Solid Waste, U.S. Environmental Protection Agency <i>Characterization of Municipal Solid Waste in the United States: 1992 Update</i> (1992)	4, 14

INTEREST OF AMICI CURIAE

Amici curiae, the State of New York, the City of New York, and the New York State Association of County Attorneys, submit this brief in support of respondent Town of Clarkstown seeking affirmance of the lower court's order in *C & A Carbone, Inc. v. Town of Clarkstown*, 182 A.D.2d 213, 587 N.Y.S.2d 681 (N.Y. App. Div. 1992), *leave to appeal denied*, 80 N.Y.2d 760, 591 N.Y.S.2d (N.Y. 1992).

Flow control ordinances are a vital component of solid waste management throughout New York. New York State has authorized 38 localities and solid waste management units to enact flow control laws so that they can fulfill their responsibility for safe, environmentally-sound management of solid waste. New York City may impose flow control to implement a large-scale food composting program. Many counties throughout the State already rely on flow control as an integral part of their solid waste management plans.

Petitioners ask the Court to invalidate a flow control ordinance that allows a local government to fulfill its obligation to protect the environment and the health of its citizens by managing garbage safely and efficiently. Petitioners' argument, if accepted, will have a devastating impact on the ability of states and localities to address their serious solid waste problems.

There are many types of flow control, each promoting compelling government interests. The flow control ordinance at issue in the instant case, for example, requires that all waste from the Town of Clarkstown be delivered to a transfer station. Other flow control ordinances require delivery of recyclable or compostable materials to a central location. For example, New York City is considering a composting program for food wastes from food stores, restaurants, and institutions. The New York City Health and Hospital Corporation is also developing a program to recycle the plastic components of regulated medical waste. If promulgated, flow control regulations would enable both of these programs to direct recoverable wastes to

recycling or composting facilities developed by the City. Such programs also will reduce the amount of waste disposed of through the less-preferred method of landfilling.

Amici urge the Court to recognize the extremely important public policy goals that are served by the use of various flow controls to address the solid waste crisis and to hold that flow control—as anticipated by Congress in RCRA and as already implemented by more than half the States in the nation—is a constitutionally permissible exercise of the local police power justified by the compelling health and safety benefits that it provides.

SUMMARY OF ARGUMENT

A growing number of states and localities ensure environmentally-sound disposal by directing garbage to a specified solid waste management facility, one which can safely separate or dispose of garbage. Such direction or “flow control” ordinances promote many compelling interests. They: 1) contribute to recycling and energy recovery; 2) reduce solid waste; 3) counter the commingling of hazardous waste; 4) provide a stable financial base for state-of-the-art solid waste management facilities and technologies; 5) ensure that garbage is handled and disposed at an environmentally-sound facility; 6) reduce truck traffic; 7) minimize CERCLA clean-up cost liability; and 8) provide necessary and accurate data on which to base an effective management plan. And while such ordinances promote modern solid waste management strategies, municipal direction of garbage is not a new idea; its history dates back 90 years.

Given these compelling benefits and the responsibility of state and local governments to ensure the safe disposal of garbage and to protect health and environment, flow control ordinances, including the Clarkstown ordinance, do not violate the Commerce Clause. In light of these benefits, the Ordinance’s evenhanded nature, and the burdens imposed on Town

residents, the Court should apply the balancing test set forth in *Pike v. Bruce Church* and *Minnesota v. Clover Leaf Creamery*. Furthermore, given the absence of viable alternatives, the Ordinance does not violate the Commerce Clause even under the strict scrutiny test of *Philadelphia v. New Jersey* and *Maine v. Taylor*.

FACTUAL AND STATUTORY BACKGROUND

In the midst of the bicentennial celebration of America’s past, Congress recognized that the nation’s future was endangered by serious health, safety, and environmental problems resulting from garbage disposal, and enacted the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6901 *et seq.* Recognizing that local governments historically had responsibility for solid waste collection and disposal, RCRA required States and localities to implement environmentally-sound disposal practices. In turn, state and local governments initiated various efforts to reduce the health and environmental hazards.

Waste collection and disposal is a quintessential local responsibility. Consistent with their historic responsibility, numerous localities across New York State have closed their unsafe landfills, arranged for the construction of centrally-located, state-of-the-art solid waste management facilities, and directed that all garbage be delivered to those facilities.

Localities such as Clarkstown do not adopt flow control ordinances in a vacuum. State, County, and Town solid waste management programs, of which flow control ordinances are but a part, are the culmination of the growing scientific awareness of the potential hazards associated with garbage disposal and the development of federal and state solid waste regulations. In the present case, it was only after the New York State Department of Environmental Conservation (“DEC”) ordered Clarkstown to close its landfill that the Town arranged for the construction of the transfer station and required that all garbage be delivered

there. To properly understand Clarkstown's ordinance it is necessary to acknowledge those hazards, the evolution of environmental laws governing waste disposal, and the benefits secured by modern solid waste management facilities and flow control ordinances.

A. GARBAGE CAN ENDANGER HEALTH AND THE ENVIRONMENT

Every day, Americans generate 500,000 tons of solid waste. The national volume grew from 88 million tons per year in 1960 to nearly 200 million tons per year in 1990. During the same time, per capita generation of municipal solid waste increased from 2.7 pounds per person per day to 4.3 pounds. The problem of ever-increasing volumes of garbage is compounded by continually shrinking disposal capacity.¹ For example, America's fifty largest cities have exhausted or will soon exhaust their landfill capacity, and in the next ten years, 80% of the currently-operating landfills will close.²

Waste disposal can pose health and environmental hazards. For example, decaying landfilled garbage produces leachate, which contains various chemical elements and compounds, including heavy metals, some of which are toxins, and volatile organic compounds ("VOCs"). Oftentimes, leachate seeps into surface or groundwater and can thereby degrade or ruin a community's water supply. Groundwater pollution can have dire and widespread consequences since nearly 50% of Americans depend on groundwater for drinking water.³ Such con-

¹ See Office of Solid Waste, U.S. Environmental Protection Agency, *Characterization of Municipal Solid Waste in the United States: 1990 Update*, ES-9, ES-13 (1990); *id.*, 1992 Update, ES-3 (1992).

² S. Rep. No. 988, 94th Cong., 2d Sess. 1 (1976); H.R. Rep. No. 1491, 94th Cong., 2d Sess. 9 (1976), *reprinted in* 1976 U.S.C.C.A.N. at 6247; see *Interstate Transport and Disposal of Solid Waste: Hearing Before the Subcomm. on Environmental Protection of the Senate Comm. on Environment and Public Works*, 101st Cong., 2d Sess. 2 (1990).

³ See Staff of the House Subcomm. on Transportation and Commerce of the House Comm. on Interstate and Foreign Commerce, 94th

tamination requires extensive and expensive cleanup measures. Sometimes it is irreversible.⁴

In the present case, leachate from Clarkstown's landfill migrated into the surrounding ground and surface water, and "present[ed] a significant threat to the public health [and] the environment" according to the DEC. R. 203. The Clarkstown site is not unique. For instance, the New York State Legislature has required the closure of all Long Island landfills without double liners because they threaten to contaminate irreversibly the aquifer that provides drinking water for the region's 2.5 million inhabitants. ECL § 27-0704(5); see 43 Fed. Reg. 26611 (1978) (EPA determination of vulnerability).

Decaying garbage also produces methane gas emissions. If not properly managed, methane can ignite, killing people and destroying buildings. H.R. Rep. 94-1491 at 37-8, *reprinted in* 1976 U.S.C.C.A.N. at 6275-6. The recent explosion at the Frisbee Avenue housing development in Albany demonstrates methane's potentially sinister consequences. Also, in March 1992, the fire from a methane explosion at the Camillus, New York landfill took several weeks to extinguish.

In addition, fires at landfills can spew clouds of particulates and incompletely burned gases and can contribute to human respiratory diseases, darken the skies, cause additional surface and groundwater contamination, and interfere with air and surface transportation. Like methane explosions, landfill fires have resulted in fatalities. H.R. Rep. 94-1491 at 37-8; see Brunner, Hubbard, Keller & Newton, *Closing Open Dumps* 2 (EPA, 1971).

Cong., 2d Sess., *Materials Relating to the Resource Conservation and Recovery Act of 1976*, at 26, 39 (1976); H.R. Rep. No. 1491, 94th Cong., 2d Sess. 89-90 (1976), *reprinted in* 1976 U.S.C.C.A.N. at 6325.

⁴ *Environmental Defense Fund, Inc. v. Costle*, 439 F. Supp. 980, 986, n. 3 (E.D.N.Y. 1977) (noting that if Long Island's aquifer became polluted "it would take as long as 3,000 years for [it] to be flushed clean").

Each of the above health and environmental dangers increases geometrically when generators, haulers, or landfill operators improperly dump hazardous waste into municipal solid waste landfills.⁵ Faced with these hazards and given the responsibility for protecting health and the environment, states and localities now are constructing and upgrading solid waste facilities to handle solid waste in an environmentally-sound and reliable manner. Few would deny that "[t]he modern landfill is a technically complex engineering exercise that comes replete with liners, leachate collection systems and highly regulated operating conditions." *Fort Gratiot Sanitary Landfill, Inc. v. Michigan Dept. of Natural Resources*, — U.S. —, —, 112 S.Ct. 2019, 2030 (1992) (Rehnquist, C.J., and Blackmun, J., dissenting); see 56 Fed. Reg. 51009 (1991). Compost operations, waste-to-energy facilities, recycling centers, and transfer stations are similarly complex. See 40 C.F.R. § 503; 6 New York Codes Rules and Regulations §§ 360-3, 360-4, 360-5, 360-11, 360-12.

B. FEDERAL & STATE ENVIRONMENTAL REGULATION

1. The Resource Conservation and Recovery Act

Congress enacted RCRA, in part, to address the health and environmental problems caused by unsafe solid waste disposal facilities, unsound disposal practices, and weak regulation. Traditionally, responsibility for garbage collection and disposal has been vested in state and local governments as part of their general police powers. Under RCRA, states and localities retain that responsibility. RCRA § 1002 (a)(4), 42 U.S.C. § 6901 (a)(4). Accordingly, one of RCRA's central objectives was to:

⁵ See H.R. Rep. 94-1491 at 17-23, reprinted in 1976 U.S.C.C.A.N. at 6255-61 (containing specific examples from across the country of the dumping of hazardous waste in landfills and the resulting damage caused by migrating leachate).

provid[e] technical and financial assistance to State and local governments and interstate agencies for the development of solid waste management plans (including resource recovery and resource conservation systems) which will *promote* improved solid waste management techniques (including more effective organizational arrangements), *new and improved methods of collection, separation, and recovery of solid waste, and environmentally safe disposal of nonrecoverable residues.*

RCRA § 1003, 42 U.S.C. § 6902 (emphasis added); see RCRA § 4001, 42 U.S.C. § 6941.

As part of the overall strategy to ensure recycling, energy recovery, resource conservation, and environmentally-sound disposal, Congress recognized the need for new, environmentally-sound solid waste management facilities and required the closure of unsafe landfills. RCRA § 4005, 42 U.S.C. § 6945. Congress also recognized that guaranteed waste streams could help finance innovative resource recovery facilities, such as recycling, composting, and waste-to-energy facilities, and that prohibitions against long-term agreements for supplying garbage would forestall the construction of such facilities and thereby threaten effective solid waste management planning. H.R. Rep. 94-1491 at 34, reprinted in 1976 U.S.C.C.A.N. at 6272. To qualify for federal funding, each state plan

(2) . . . shall . . . prohibit the establishment of new open dumps within the State and contain the requirement that all solid waste (*including solid waste originating in other states. . .*) shall be (A) utilized for resource recovery or (B) disposed of in sanitary landfills . . . or otherwise disposed of in an environmentally sound manner;

(5) . . . shall provide that no local government within the state shall be prohibited under state or local law from entering into long-term contracts for the supply of solid waste to resource recovery facilities

RCRA § 4003 (a)(2), (5) (emphasis added)⁶. By abolishing prohibitions against long-term contracts, Congress freed local governments to develop long-range plans and to conclude long-term contracts for waste streams thereby encouraging localities to move beyond mediocre, interim facilities. The requirement that *all* solid waste within a state be recycled or disposed of in a safe manner coupled with the ability to enter into long-term contracts thus provided strong incentives for local governments to control their waste streams and to develop solid waste management facilities that provide a safe and long-term solution to the solid waste crisis.

2. New York State's Comprehensive Solid Waste Management Statutes

Much of New York State's solid waste management law, ECL Title 27, was enacted in response to RCRA.⁷ Like Congress, the New York State Legislature found "that unwanted residues of our society have polluted many of our land and water resources, while at the same time depleting our finite stock of natural resources." L. 1980, c. 552, § 1. Consistent with traditional responsibilities, the statute provides that localities and counties have primary responsibility for solid waste management. ECL §§ 27-0101(2); 27-0107; 27-0711.

Title 27 promotes the development of new, environmentally-sound solid waste management facilities as well as the implementation of a comprehensive solid waste management plan in accordance with RCRA. L. 1980, c. 552, § (1)(a). Also, the statute seeks to eliminate barriers and provide incentives for long-term efficient solid waste management. L. 1980, c. 552,

⁶ Subsection (a)(5) was amended by the Solid Waste Disposal Act of 1980 to further ensure that states and localities faced no obstacles in developing long-term commitments for recycling and resource recovery. 42 U.S.C. § 6943 (a)(5).

⁷ L. 1977, c. 425, § 6 and L. 1980, c. 552, § (1)(b)(2) both state that New York's solid waste legislation was enacted, in part, to conform to RCRA. See also ECL § 27-0103.

§ (1)(b). Consistent with RCRA and EPA regulations, the New York State Legislature established the following solid waste management priorities:

- (a) first, to reduce the amount of solid waste generated;
- (b) second, to reuse material for the purpose for which it was originally intended or to recycle material that cannot be reused;
- (c) third, to recover, in an environmentally acceptable manner, energy from solid waste that cannot be economically and technically reused or recycled;
- (d) fourth, to dispose of solid waste that is not being reused, recycled or from which energy is not being recovered, by land burial or other methods approved by the [DEC].

ECL § 27-0106(1). In order to achieve these goals and recognizing that solid waste management facilities are complex and capital-intensive, the New York State Legislature on 38 separate occasions has granted localities and planning units the authority to control the handling of all solid waste within their jurisdictions.⁸ The Rockland County Solid Waste Treatment and

⁸ See L. 1976, c. 913 (Niagara County); L. 1979, c. 509 (Town of Oyster Bay); L. 1979, c. 510 (Town of North Hempstead); L. 1980, c. 560 (New York City); L. 1981, c. 932 (Onondaga County); L. 1982, c. 632 (Town of Islip); L. 1982, c. 675 (Dutchess County); L. 1983, c. 502 (St. Lawrence County); L. 1983, c. 513 (Washington County); L. 1983, c. 930 (Broome County); L. 1984, c. 638 (North Hempstead Solid Waste Management Authority); L. 1985, c. 478 (Town of Babylon); L. 1985, c. 670 (Jefferson and Lewis Counties); L. 1985, c. 697 (Essex County); L. 1985, c. 797 (Town of Hempstead); L. 1986, c. 627 (Western Finger Lakes Solid Waste Management Authority); L. 1986, c. 840 (Town of Huntington); L. 1986, c. 936 (Ulster County); L. 1987, c. 71 (Warren County); L. 1987, c. 485 (Orleans County); L. 1987, c. 747 (Montgomery, Otsego, and Schoharie Counties); L. 1987, c. 773 (Saratoga County); L. 1988, c. 627 (Oneida and Herkimer Counties); L. 1988, c. 665 (Franklin County); L. 1988, c. 667 (Town of Brookhaven); L. 1988, c. 670 (Essex County); L. 1989, c. 80 (Town of Smithtown); L. 1989, c. 726 (Eastern Rensselaer

Disposal Act, L. 1991, c. 569, authorizes localities in Rockland County, such as the Town of Clarkstown, to require that "all solid waste generated, originated or brought within their respective boundaries . . . shall be delivered to a specified solid waste management resource recovery facility" including a transfer station.

Rockland County has developed a comprehensive solid waste management plan that includes the implementation of a source-separation program for various recyclables, and the development of composting facilities, materials recovery facilities, and an environmentally-sound landfill. The Clarkstown transfer facility plays an integral role in the operation of the County Plan.

C. FLOW CONTROL PROMOTES MANY COMPELLING BENEFITS

Taking responsibility for waste recycling, energy recovery, waste reduction, and environmentally-sound waste disposal requires the ability to direct the flow of waste. Absent such control, state and local efforts to ensure safe and efficient waste disposal will fail. See U.S. Environmental Protection Agency, *The Solid Waste Dilemma: An Agenda For Action* 14 (1989); U.S. Congress, Office of Technology Assessment, *Facing America's Trash: What Next for Municipal Solid Waste* 275 (1989).

Flow control is not a recent innovation. Ordinances directing garbage to a specific landfill or hauler are at least 90 years old. In 1905 this Court upheld two such ordinances against takings claims as valid exercises of the police power. *California Reduction Co. v. Sanitary Reduction Works*, 199 U.S. 306

County); L. 1991, c. 369 (Madison County); L. 1991, c. 540 (Fulton County); L. 1991, c. 631 (certain towns in Westchester County); L. 1992, c. 252 (Tompkins County); L. 1992, c. 350 (Greene County); L. 1992, c. 369 (Sullivan County); L. 1992, c. 391 (Greater Troy Solid Waste Management Authority); L. 1992, c. 567 (Town of Riverhead); L. 1992, c. 629 (Westchester County).

(1905); *Gardner v. Michigan*, 199 U.S. 325 (1905). More recently, when Congress enacted RCRA, it recognized that various states and localities already "require all discarded materials be transported to a particular location" and it made clear that the legislation did not interfere with such flow control ordinances. H.R. Rep. 94-1491 at 34. At least twenty-nine states and territories have now adopted flow control ordinances.⁹

Flow control promotes New York State public policy as expressed in ECL § 27-0106, *supra* at 9, by providing at least eight benefits. First, flow control promotes the twin goals of energy recovery and recycling, two cornerstones of federal and state policy. By requiring all solid waste to be delivered to a central location, towns and their agents can ensure—in the most efficient manner possible—that all materials that can be

⁹ See e.g., Colorado (Colo. Rev. Stat. § 30-20-107); Connecticut (Conn. Gen. Stat. § 22A-220A); Delaware (Del. Code Ann. tit. 7 § 6406 (31) (1991)); District of Columbia (D.C. Code § 6-507); Florida (Fla. Stat. §§ 403.7063; 403.713 (1986 and Supp. 1992)); Hawaii (Haw. Rev. Stat. § 340A-3(a)); Illinois (Ill. Ann. Stat. c. 34 P 5-107); Indiana (Ind. Code §§ 36-9-31-3 & 4); Iowa (Iowa Code § 28G.4); Louisiana (La. Rev. Stat. 30:2307 (9)); Maine (Me. Rev. Stat. Ann. tit. 38, § 1304-D (West 1989 and Supp. 1991)); Minnesota (Minn. Stat. § 1158.80 (1990 and Supp. 1991)); Mississippi (Miss. Code Ann. § 17-17-319); Missouri (Mo. Rev. Stat. § 260.202); New Jersey (N.J. Stat. Ann. §§ 13:1E-22, 48:13A-5); New York (1991 N.Y. Laws, c. 569, at 1687-89); North Carolina (N.C. Gen. Stat. § 130A-294); North Dakota (N.D. Cent. Code §§ 23-29-06(6) & (8)); Ohio (Ohio Rev. Code Ann. § 343.01 (H)(2)); Oregon (Or. Rev. Stat. § 268.317 (3) & (4)); Pennsylvania (Pa. Stat. Ann. tit. 53, § 4000.303(e)); Rhode Island (R.I. Gen. Laws § 23-19-10(40)); Tennessee (Tenn. Code Ann. 68-211-814); Vermont (Vt. Stat. Ann. tit. 24, §§ 2203a, 2203b); Virginia (Va. Code Ann. § 15.1-28.01); Washington (Wash. Rev. Code § 36.58.040, 35.21.120); West Virginia (W. Va. Code § 240-2-1h); Wisconsin (Wis. Stat. § 159.13(3), (11)); Virgin Islands (19 V.I.C. § 1570f).

Flow control, of course, does not violate the Sherman Act. *Central Iowa Refuse Systems, Inc. v. Des Moines Metropolitan Solid Waste Agency*, 715 F.2d 419, 425 (8th Cir. 1983), *cert. denied*, 471 U.S. 1003 (1985); see *Town of Hallie v. City of Eau Claire*, 471 U.S. 34 (1985).

removed from the solid waste stream for energy recovery or recycling are indeed removed from the waste stream. Monitors divert recyclable material improperly included in the waste stream and deter improper disposal practices.

Second, flow control promotes the related goal of solid waste reduction, "a key strategy in [New York's] solid waste management policy." L. 1988, c. 70, § 2. By imposing volume-based disposal costs reflective of state-of-the-art technology, flow control ordinances encourage citizens and corporations to reduce the amount of waste they produce. See *Agenda for Action* at 34. Additionally, the removal of all materials from the solid waste stream for energy recovery, composting, and recycling reduces, by definition, the volume of solid waste. Less solid waste translates into fewer health and environmental hazards at downstream landfills.

Third, by funnelling all solid waste to a central location, flow control allows localities to thoroughly monitor the solid waste stream to ensure that hazardous and medical wastes are not commingled with solid waste. Commingling is not a hypothetical problem. Tainted solid waste damages a municipality's reputation, making it more difficult and more expensive to dispose of its solid waste, and increases the health and environmental hazards to those communities that surround compost or landfill facilities as well as to those who work at such facilities. Absent flow control, towns could not check the entire waste stream and intercept commingled waste. Flow control provides an efficient and necessary first line of defense against the commingling of hazardous and medical waste.

Fourth, both Congress and the State Legislature expressly recognized that guaranteed waste streams are crucial to the success of state-of-the-art resource recovery facilities. See H.R. Rep. No. 94-1491 at 34. Flow control regulations provide the investment security for such necessary projects. *Hybud Equipment Corp. v. Akron*, 654 F.2d 1187, 1190 (6th Cir. 1981), *vacated on other grounds*, 455 U.S. 931 (1982), *on remand*,

742 F.2d 949 (1984), *cert. denied*, 471 U.S. 1004 (1985). By ensuring a steady, long-term supply of garbage, flow control provisions provide a broad financial base for revenue bonds. Such a secure, long-term foundation makes the solid waste facility an attractive investment. Absent flow control, waste-flight will disrupt and destroy the formation of a secure financial base, and revenue bonds will not be marketable. See *Central Iowa Refuse Systems*, 715 F.2d 419, 422-27; *Hybud*, 654 F.2d at 1190.¹⁰

In a similar manner, by guaranteeing a waste stream and stabilizing a market, flow control fosters the development of innovative recycling, composting, and energy-recovery technologies. This encouragement of new technologies was clearly contemplated by Congress when it enacted RCRA. H.R. Rep. 94-1491 at 34; see also 40 C.F.R. §§ 256.30, 256.31. For example, flow control can assist New York City in developing cutting-edge technology for large-scale composting of food wastes. The inability to utilize flow control will inhibit the development of new technologies and programs as well as the construction of environmentally-sound solid waste management facilities. See *Agenda for Action* at 14.

Fifth, separate and apart from providing the financial base for solid waste management facilities, flow control also ensures that garbage is actually shipped to and disposed of at environmentally-sound facilities. As recognized by Congress and the State Legislature, such facilities are essential if localities are to effectively address the garbage crisis. Flow control helps towns to guarantee that garbage is disposed of at an authorized

¹⁰ In New York, \$2 billion in revenue bonds have been issued over the past ten years to finance solid waste management projects. In localities with flow control, approximately \$1 billion in revenue bonds are currently outstanding. Any displacement of flow control could undermine such bonds, threaten bondholders' investments, and trigger litigation rivaling the "WPPSS" saga. See generally *In re Washington Public Power Supply System*, 720 F. Supp. 1379 (D. Ariz. 1989), *aff'd*, 955 F.2d 1268 (9th Cir.), *cert. denied*, — U.S. —, 113 S.Ct. 408 (1992).

facility even if flow control is not needed to finance the facility.

Sixth, flow control helps states and localities avoid financial exposure. Under *B.F. Goodrich Co. v. Murtha*, 958 F.2d 1192 (2d Cir. 1992), a municipality may be liable for CERCLA clean-up costs incurred at disposal sites where its waste was dumped. See 42 U.S.C. § 9601 *et seq.* By directing municipal solid waste to a specific environmentally-sound disposal facility, localities can avoid or minimize such liability. *Northside Sanitary Landfill v. Indianapolis*, 902 F.2d 521 (7th Cir. 1990) (city may concentrate its garbage at a single site given concern about clean-up costs at another site).

Seventh, in the context of transfer stations, flow control can reduce the volume of truck traffic as well as the volume of garbage transported to another facility. Transfer stations reduce waste volume by removing recyclables and then compacting the residue for shipment. Also, by consolidating the contents of several collection trucks for shipment in one larger truck, transfer stations reduce truck traffic. Mulvey, "Cost Guidelines for the Recycling Option," printed in *Selected Papers from the 1989 Conference on Solid Waste Management and Materials Policy* (New York State Legislative Commission on Solid Waste Management, 1989); *Filiberto Sanitation, Inc. v. State of New Jersey Dept. of Environmental Protection*, 857 F.2d 913, 920 (3rd Cir. 1988).

Eighth, by providing municipalities an opportunity to obtain an accurate characterization of their waste streams, flow control provides an indispensable tool for developing a viable, comprehensive solid waste management plan. *Filiberto Sanitation*, 857 F.2d at 920. According to the EPA, the identification of the waste stream's components and volume is an indispensable first step towards solving the problems associated with garbage generation and disposal. Office of Solid Waste, U.S. Environmental Protection Agency, *Characterization of Municipal Solid Waste in the United States: 1992*

Update ES-1 (1992). Similarly, New York statutes require local solid waste management plans to contain, first and foremost, a "characteriz[ation of] the solid waste stream." ECL § 27-0107(1)(b)(i); accord ECL § 27-0405(2)(a).

For these reasons, flow control promotes many compelling local, state, and national interests.

D. THE CLARKSTOWN TRANSFER STATION PROTECTS THE COMMUNITY'S HEALTH AND ENVIRONMENT

1. The Clarkstown Landfill

The Clarkstown landfill opened in 1950. In 1980 DEC determined that the landfill constituted a "significant threat to the public health [and] the environment." R. 181, 202-03. Garbage was placed directly into the groundwater, and leachate was seeping into the groundwater and threatening the drinking water. R. 175-76. Therefore, DEC ordered the Town to close the landfill, listed it in the Registry of Inactive Hazardous Waste Disposal Sites, and assessed significant penalties. R. 189, 203. As a result of DEC's enforcement action, the Town agreed to construct a state-of-the-art transfer station that ultimately would form part of a county-wide solid waste management program. A private contractor, Recycling Center Inc. ("RCI"), constructed and operates the transfer station, charging \$81 per ton of trash.¹¹ While petitioners complain about the Town's tipping fee, the difference in operations between their facility and Clarkstown's more than justifies the 15% differential.

2. Clarkstown's Transfer Station & Petitioners' Facility

Petitioners' characterization of the "simpl[e] transfer station," Pet. Br. at 13, masks the complexity of the Clarkstown facility. To gain access, each truck must first pass between two

¹¹ The Town has an option to purchase the station in 1995.

geiger counters to ensure no radioactive waste is present. Next, a Town employee examines the truck's manifest and weighs the truck. Video cameras record each entry. The transfer station itself is a huge three-story building, with a large bay area inside on the second floor where the solid waste is deposited. Here, Town and RCI employees visually check the waste for the presence of recyclables, hazardous waste, and medical waste. A roof and walls surround the transfer bay and contain blowing litter and unpleasant odors. Workers and machines then segregate recyclable materials such as tires, wood, cardboard, metal, branches, and yard clippings. The tires, metal, and cardboard are shipped to recycling centers. The Town pulverizes the wood and yard clippings and deposits the residue in the Town's compost field, located next door. After the recyclables are separated, machines load the non-recyclable residue into tractor-trailer dump trucks waiting below on the first floor or compress it for other trucks. The tipping fee charged by the Clarkstown facility reflects the cost of the environmentally-sound practices employed at a state-of-the-art facility.

In contrast, petitioners' site has no perimeter fence, no enclosed dumping bay, no enclosed loading area, and no radioactive waste sensors. Also, petitioners' recycling claims ring hollow in light of the police investigation that revealed that petitioners send recyclable material, such as steel rims and truck springs, to landfills and incinerators. R. 50, J.A. 17. Moreover, it appears that petitioners improperly mixed medical waste, including surgical gloves and intravenous feeding bags, with the solid waste. J.A. 17. While petitioners assert that they deal only in non-Clarkstown or non-New York State waste, the police officers' identification of Clarkstown waste at the site of the March 8, 1991 highway accident belies that claim. R. 55-6. Given these practices, it is no surprise that petitioners wish to avoid the inspection regimen of the Clarkstown facility.

ARGUMENT

FLOW CONTROL PROVIDES SUBSTANTIAL LOCAL BENEFITS WITHOUT RESTRICTING INTERSTATE COMMERCE

A. The Purpose of the Commerce Clause

The dormant Commerce Clause acts as a limitation on the states' authority to erect protectionist state barriers that would threaten the operation of the federal union. The Commerce Clause has been construed to preserve our "national solidarity" by preventing states from isolating themselves from problems common to all and fomenting "rivalries and reprisals" similar to those that existed under the short-lived Articles of Confederation. *Baldwin v. G.A.F. Seelig, Inc.*, 294 U.S. 511, 522-23 (1935); *West v. Kansas Natural Gas*, 221 U.S. 229 (1911). This grant of general power upon Congress to regulate commerce, however, did not preempt the states' police powers. "[I]n the absence of conflicting legislation by Congress, there is a residuum of power in the State to make laws governing matters of local concern which nevertheless in some measure affect interstate commerce or even, to some extent, regulate it." *Hunt v. Washington State Apple Advertising Comm.*, 432 U.S. 333, 350 (1977); *Parker v. Brown*, 317 U.S. 341, 360-61 (1943). Although petitioners apparently view the Commerce Clause as a constitutional antitrust provision, its focus instead is the protection of interstate markets, not particular interstate companies, from unduly burdensome regulations. *Exxon Corp. v. Governor of Maryland*, 437 U.S. 117, 127-128 (1978).

B. Standard Of Review

This Court has developed two standards of review in analyzing Commerce Clause issues. First, economically protectionist regulations, that is, those regulations that discriminate against interstate commerce in favor of in-state interests, are subject to strict scrutiny. *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 471 (1981); *Philadelphia v. New Jersey*, 437

U.S. 617, 624 (1978). A court may find that a state law constitutes "economic protectionism" (1) if the statute differentiates between in-state and out-of-state interests by favoring the former or burdening the latter or (2) if the statute was motivated by a discriminatory purpose. The inquiry into whether or not a discriminatory purpose motivated the statute usually centers on the legislative history behind the enactment. See *Washington Apple*, 432 U.S. 333, 352; *Clover Leaf Creamery*, 449 U.S. at 471, n. 15; *Bacchus Imports, Ltd. v. Dias*, 468 U.S. 263, 269-71 (1984). While in practice, the strict scrutiny standard results in a virtual *per se* rule of invalidity, "[a]s long as a state does not needlessly obstruct interstate trade or attempt to 'place itself in a position of economic isolation,' it retains broad regulatory authority to protect the health and safety of its citizens and the integrity of its natural resources." *Maine v. Taylor*, 477 U.S. 131, 151 (1986) (citation omitted).

Second, in contrast to protectionist regulations, "evenhanded" regulations, that is, those regulations that apply equally to in-state and out-of-state interests, are subject to a balancing test outlined in *Pike v. Bruce Church Inc.*, 397 U.S. 137, 142 (1970). Under the *Pike* standard, an "evenhanded" state regulation is valid even if it effects an incidental burden on interstate commerce so long as that burden is not clearly excessive in relation to the local benefits. The examination of "incidental burdens on interstate commerce" is a comparative standard, and focuses on the degree to which a state action burdens interstate commerce relative to intrastate commerce. *Clover Leaf Creamery*, 449 U.S. at 471-72; *Huron Portland Cement Co. v. Detroit*, 362 U.S. 440, 448 (1960). Where the burden on out-of-state interests is no different from that placed on similar in-state interests, there is no burden on interstate commerce; rather, there is only a constitutionally unobjectionable burden on all commerce. Thus, evenhanded legislation will normally be upheld.¹²

¹² Only in rare instances, such as in *Pike* itself, where there are both substantial costs imposed on out-of-state interests and *de minimus* local benefits, will evenhanded regulations be struck down.

C. The Strict Scrutiny Test Is Inapplicable

In contrast to their position below where they urged the trial Court to apply the *Pike* balancing test, petitioners now strenuously argue that the strict scrutiny standard should apply. Pet. App. 19a. The strict scrutiny test has no application here. To begin with, the Ordinance is facially neutral. The Ordinance applies to "all solid waste within or generated within the Town." To that end, "[a]ll solid waste . . . shall be removed, transported and/or disposed of only by carters licensed [by the Town]" and any and all solid waste, regardless of origin, is to be transported and delivered to the Town's transfer station. Pet. App. 50a-53a (emphasis added). Moreover, the Town has established a single, uniform tipping fee for each ton of solid waste brought to the transfer station, regardless of its origin. Thus, the Ordinance "visits its effects on both interstate and local business." *CTS Corp. v. Dynamics Corp. of America*, 481 U.S. 69, 87 (1987).

Even if the Ordinance is perceived as burdening the interstate flow of solid waste, it is clear that the Ordinance similarly burdens Clarkstown garbage. The Ordinance's equal treatment of interstate and local solid waste defeats application of the strict scrutiny standard. In each decision applying that standard the Court has been confronted by a statute that imposed an export or import ban of a certain good, while permitting the continuation of in-state trade in that good. *Philadelphia v. New Jersey*, 437 U.S. 617 (law precluded out-of-state trash from being disposed of in New Jersey, but did not similarly restrict disposal of New Jersey trash); *Fort Gratiot*, — U.S. —, 112 S.Ct. 2019 (same effect); *Chemical Waste Mgmt. Inc. v. Hunt*, — U.S. —, 112 S.Ct. 2009 (1992) (law established higher tipping fee for out-of-state-solid waste but did not so burden in-state waste); *Baldwin*, 294 U.S. 511 (statute barred retail sale of Vermont-produced milk in New York); *Hughes v. Oklahoma*, 441 U.S. 322 (1979) (law precluded export of Oklahoma minnows for sale, but allowed in-state sales). It is discrimination against the interstate movement of goods, while favor-

ing or failing to burden the *intrastate* movement of goods, that triggers the strict scrutiny standard. This point was made most clearly in *Philadelphia v. New Jersey* where the Court stated that while New Jersey could not stem the depletion of landfill capacity by blocking the disposal of only out-of-state trash, it could pursue that goal without violating the Commerce Clause by slowing the flow of all waste, both in-state and out-of-state, into its landfills, even though such a strategy would impede the flow of out-of-state waste across its border. 437 U.S. at 626.

Unlike the situations in *Washington Apple*, 432 U.S. at 352, or *Bacchus*, 468 U.S. at 269-71, there is no evidence of discriminatory purpose behind the Ordinance. Here, the Town Board arranged for the facility's construction and adopted the Ordinance only after DEC determined that the landfill constituted a danger and ordered it closed. The purpose of the Ordinance was to ensure the delivery of all solid waste to the transfer station so as "to benefit the health, welfare, and safety of the town residents." Pet. App. 50a. These articulated purposes deserve deference, see *Clover Leaf Creamery*, 449 U.S. at 463 n. 7, 471 n. 15, and include promoting New York State's public policy of reducing solid waste volume, increasing resource recovery and recycling, and ensuring safe and reliable handling of solid waste. Even if the Ordinance primarily burdened interstate companies, which it does not, that fact "does not lead, either logically or as a practical matter, to a conclusion that the State is discriminating against interstate commerce." *Exxon*, 437 U.S. at 125. Discrimination simply is not present.¹³ Far from protecting the Town residents' economic interests, the Ordinance works to the residents' economic disadvantage since the same \$81 tipping fee that applies to out-of-state haulers also applies to all in-state haulers that come to the facility. Given this equal treatment, it cannot be said that Clark-

¹³ The Clarkstown facility ships non-recyclable solid waste to many of the same sites to which petitioners shipped waste. Accordingly, petitioners' suggestion, Pet. Br. at 34-5, that the Clarkstown facility "obstruct[s] the use of solid waste as a source of energy" is disingenuous.

stown is imposing the "full burden" of supporting the transfer facility upon out-of-state interests. *Philadelphia v. New Jersey*, 437 U.S. at 628. Restrictions on out-of-state interests are permissible so long as they are evenly applied to in-state interests. "Obviously, a State that imposes severe withdrawal and use restrictions on its own citizens is not discriminating against interstate commerce when it seeks to prevent the uncontrolled transfer of water out of the state." *Sporhase v. Nebraska*, 458 U.S. 941, 955-56 (1982). Here, "[t]he existence of major in-state interests adversely affected by the [law] is a powerful safeguard against legislative abuse" and justifies the application of the balancing test. *Clover Leaf Creamery*, 449 U.S. at 473 n. 17; *South Carolina State Highway Dept. v. Barnwell Bros. Inc.*, 303 U.S. 177, 187 (1938); *Kassel v. Consolidated Freightways Corp.*, 450 U.S. 662, 675 (1981); *Fort Gratiot*, 112 S.Ct. at 2029 (Rehnquist, C.J., and Blackmun, J., dissenting).

D. Under the *Pike* Balancing Standard, the Ordinance Is Valid

This Court has applied a balancing test to several evenhanded regulations, like the Clarkstown Ordinance, that do not differentiate between in-state and out-of-state interests. In *Clover Leaf Creamery*, the Court applied the balancing test and upheld a statute that prohibited all retailers from selling milk in plastic, non-returnable cartons. Although the statute did burden out-of-state plastic manufacturers, "this burden [was] not 'clearly excessive' in light of the substantial state interests in promoting conservation of energy and other natural resources and easing solid waste problems." 449 U.S. at 473; see *Huron Portland Cement*, 362 U.S. at 448 (burden did not outweigh benefits of evenhanded smoke abatement ordinance).

In a Commerce Clause challenge against a similar flow control law, the Third Circuit Court of Appeals applied the *Pike* test and upheld the statute. *Filiberto Sanitation, Inc. v. New Jersey Dept. of Environmental Protection*, 857 F.2d 913, 919-

22 & n.1 (3d Cir. 1988). The regulation in *Filiberto Sanitation* provided several benefits including ensuring the proper disposal of all trash, reducing truck traffic, providing accurate data for planning purposes, facilitating long- and short-term contracts for final disposal, and discouraging illegal dumping by directing garbage to prescribed sites. The county transfer station charged \$100 per ton. Filiberto claimed it charged \$50 per ton. *Id.* at 916.

Recognizing that legitimate health and safety regulations may unavoidably effect an incidental burden on interstate commerce, *id.* at 918-19 (citing cases), the Third Circuit focused on whether the regulation saddled out-of-state interests with the burden of the solution to New Jersey's solid waste problem. The court held that the regulation did not constitute economic protectionism because: it applied equally to in-state and out-of-state interests, *id.* at 921; no discriminatory purpose was identified, *id.* at 920-21; and the garbage continued to flow into interstate commerce. Accordingly, the court declined to apply the heightened scrutiny standard and instead applied the balancing test. Finding no burden that discriminated against interstate commerce and the existence of compelling local benefits, the Third Circuit rejected the Commerce Clause challenge. *Id.* at 922.

The Sixth Circuit Court of Appeals has also upheld an ordinance directing that all trash be delivered to a waste-to-energy plant. *Hybud Equipment Corp. v. Akron*, 654 F.2d 1187 (6th Cir. 1981). The Sixth Circuit balanced the parties' claims. Since the ordinance was a legitimate exercise of the police power and its burden "[e]ll hardest" on Akron residents and interests, it did not constitute a discriminatory burden on out-of-state interests and did not violate the Commerce Clause. 654 F.2d at 1194-95; *see also In re Waste Disposal Agreement*, 237 N.J. Super. 516, 568 A.2d 547 (N.J. Super. 1990); *In re Fiorillo Bros.*, 242 N.J. Super. 667, 577 A.2d 1316 (N.J. Super. 1990); *Harvey & Harvey, Inc. v. Delaware Solid Waste Auth.*, 600 F. Supp. 1369, 1379-1381 (D. Del. 1985).

Like fire and police protection, the control of local sanitation—including garbage collection and disposal—remains a paradigmatic example of the exercise of municipal responsibility and power. *California Reduction Corp.*, 199 U.S. 306; *Gardner v. Michigan*, 199 U.S. 325. As the Second Department correctly noted below, "[l]ocal governments have long been authorized to enact laws relating to the 'safety, health, and well-being of persons or property' (N.Y. Const., Art. IX, § 2 [c][10]), and it is well settled that the regulation of solid waste collection and disposal, a function traditionally entrusted to State and local governments, is fundamentally related to the public health and welfare." Pet. App. 9a (citations omitted).

Police power ordinances, such as Clarkstown's, have a strong presumption of validity. As this Court stated in *California Reduction*, "[e]very intendment is to be made in favor of the lawfulness of the exercise of municipal power making regulations to promote the public health and safety." 199 U.S. at 319. This is so because states retain the authority to regulate matters of state and local concern on which Congress has not spoken. *See Parker v. Brown*, 317 U.S. at 360-363. Given the hazards associated with garbage and its negative economic value, *see Swin Resource Systems, Inc. v. Lycoming County*, 883 F.2d 245, 253 (3rd Cir. 1989), *cert. denied*, 493 U.S. 1077 (1990), and their traditional responsibility for garbage disposal, states and localities have, and must continue to have, the power to direct garbage to facilities that can safely dispose of it. As the Appellate Division recognized below, the focus of such police power regulation is "public welfare, rather than profit." Pet. App. 10a. "Where Congress has not acted, a state's own health and safety-oriented trash disposal regulation violates no federal constitutional precepts, provided it neither unduly protects its own citizens nor discriminates against another state's citizens." *In re Waste Agreement*, 568 A.2d at 555; *Parker v. Brown*, 317 U.S. at 367. Moreover, where such regulations are consistent with overall Congressional legislation, as in the present case, they should receive greater deference.

As set forth *supra* at 10-15, flow control ordinances promote many compelling governmental purposes. Clarkstown's Ordinance similarly fosters important interests. The Ordinance ensures that all recyclables are removed from the waste stream and thereby promotes the conservation of energy and other natural resources. Petitioners' attempted disposal of recyclable materials at a landfill, J.A. 16-17, underscores the need for flow control. Moreover, by increasing recycling and imposing volume-based disposal costs, the Ordinance promotes the reduction of the overall volume of solid waste to the fullest extent possible. These two goals constitute "substantial state interest[s]." *Clover Leaf Creamery*, 449 U.S. at 473; RCRA § 4001, 42 U.S.C. § 6941; ECL § 27-0106(1). Additionally, the Ordinance allows Town and DEC officials to inspect deliveries to ensure individuals or corporations are not avoiding DEC's medical or hazardous waste regulations. The benefits of flow control and comprehensive inspections were recently demonstrated when the monitors detected radioactive waste and thereby prevented the contamination of the waste stream. D. McClendon, *Radioactive Waste is Held in Limbo*, Rockland Journal-News, May 17, 1993, at B1. Furthermore, the Ordinance contributes to the financial viability of the facility. By designating a single delivery site for solid waste, the Town also ensures that garbage is handled by an environmentally-sound facility and augments ordinances that prohibit "midnight dumping" in remote areas. The Town has cause to be concerned about this issue. See S. Lieberman, *Abandoned Trash in West Virginia is Traced to Local Carbone Site*, Rockland Journal-News, July 26, 1991, at B3. Lastly, the Ordinance ensures that town officials will have a complete, accurate, and ongoing understanding of the waste stream, allowing effective planning.

Even assuming, however, that the Ordinance effects some burden on interstate commerce, it is only incidental and should not defeat the evenhanded Ordinance which promotes compelling state and local interests. *Clover Leaf Creamery*, 449 U.S. at 471-73; *Huron Portland Cement*, 362 U.S. at 448

(evenhanded city smoke abatement ordinance upheld, despite requirement that ships passing in interstate waters would have to modify their boilers, given important city interest "to better the health and welfare of the community"); *Parker v. Brown*, 317 U.S. at 367 (price stabilization program upheld "although it undoubtedly affected the commerce by increasing the interstate price of raisins and curtailing interstate shipments"). Thus, where, as here, the challenged regulation imposes no burden on out-of-state interests and promotes compelling local interests the Court should uphold the Ordinance.

E. Given the Compelling Non-Economic Interests Fostered by the Ordinance and the Absence of Other Alternatives, the Town Ordinance Is Constitutional Under Either Standard of Review

Under either the strict scrutiny standard or the balancing test, the statute should be found constitutional because less-discriminatory alternatives are not available to preserve the compelling, non-economic local interests. *Maine v. Taylor*, 477 U.S. at 137-38; see *Fort Gratiot*, 112 S.Ct. at 2027-28. Petitioners have suggested the creation of a solid waste tax district or raising the property tax as a "non-discriminatory" alternative to flow control. Pet. Br. at 27-29, 36. This argument incorrectly assumes that the sole purpose of flow control is to finance solid waste management facilities. As discussed, *supra* at 10-15, flow control serves many compelling local purposes in addition to facility financing.

Lack of control over garbage will doom any attempt at long range solid waste planning and could well leave solid waste facilities underutilized or standing idle. More importantly, taxes do not direct garbage to authorized, environmentally-sound facilities. Additionally, taxes, unlike tipping fees, will not bring about a reduction of solid waste nor will they promote recycling because a general tax is too far removed from the production of garbage to be an effective tool in encouraging waste reduction. Just as water meters discourage water

waste and allow users to be billed according to the quantity they consume, tipping fees will encourage waste reduction and will impose, quite properly, the greatest costs on those who produce the most waste. Since taxes do not affect disposal habits, they cannot effectuate the federal and state goals to increase recycling and resource recovery and reduce waste. Unlike channeling solid waste to a central point where it is inspected and materials are removed, taxes do not allow municipalities to ensure that recyclable goods are removed from the waste stream. Also, the erection of a tax regime in place of flow control would allow haulers to avoid the radiation detection check and inspection by town personnel. Haulers then could mix hazardous and medical waste with solid waste. Similarly, a tax regime provides no effective means to minimize CERCLA liability or to analyze the waste stream to support long-term planning. Lastly, with no requirement that trash be reduced and compacted for efficient shipments in long-bed trucks, the number of truck trips would increase and savings in gasoline economy would be lost.

The so-called "processing" cases cited by petitioners are inapplicable. Pet. Br. at 19-22. None of these decisions involved a regulation to protect the community's health and environment. The state policies at issue in those cases do not rise to the level of a state's *responsibility* to protect the health and environment of its citizens. See *Toomer v. Witsell*, 334 U.S. 385 (1948) (regulation designed to increase employment in state shrimp industry); *South Central Timber Dev., Inc. v. Wunnicke*, 467 U.S. 82, 85-6, n. 5 (1984) (regulation designed to protect in-state employees resulted in the production of "cants," a semi-processed timber product of dubious utility); *Pike v. Bruce Church*, 397 U.S. at 144-45 (regulation designed to effectuate the state's "tenuous interest" in promoting the reputation of Arizona cantaloupes); *Foster-Fountain Packing Co. v. Haydel*, 278 U.S. 1, 10 (1928) (statute's real design was to cause "the removal of the packing and canning industries from Mississippi to Louisiana"). Garbage is fundamentally different from the goods involved in those cases. Unlike shrimp, oysters,

and timber, garbage has a negative economic value and endangers the health and environment. While petitioners characterize garbage as gold, its "value" is created only because it must be disposed of in an environmentally-sound manner.¹⁴ None of the cases cited by petitioners address the power of states and localities to channel wastes for the protection of the community.

In an attempt to avoid the balancing standard, petitioners appear to argue that *Pike* "actually applied the *per se* standard in striking down the statute." Pet. Br. 30 n. 16. Petitioners misunderstand *Pike*. There, the cantaloupe packing requirement exacted a heavy burden. It would cause the respondent to lose its entire 1968 crop valued at \$700,000, and to expend some \$200,000 to build an in-state packing facility, after already having spent \$3,000,000 to develop uncultivated, arid land into a farm. In comparison, the local interest was virtually non-existent. The statute was enacted to promote the reputation of Arizona cantaloupes and would allow other growers to benefit from respondent's superior product. The Court explicitly considered both the benefits and the burden of the state law, and found the burden too great:

Such an incidental consequence of a regulatory scheme [i.e., the costs to appellee] could perhaps be tolerated if a more compelling state interest were involved. But here the State's interest is minimal at best. . . .

397 U.S. at 146. This weighing of the benefits and burdens of the state law was a deliberate and obvious application of the balancing test expounded in *Pike* itself, and the Court invalidated the law not under any *per se* rule, but rather because the

¹⁴ In addition, the regulation in *Toomer* "captured" shrimp caught in the ocean and forced the harvest to come ashore in South Carolina before it could continue in interstate commerce. Clarkstown has no such capture provision; haulers are free to bring non-Clarkstown waste wherever they wish. All the Ordinance requires is that once haulers decide to bring garbage into the town, it be delivered to the environmentally-sound transfer facility.

state's interest was so "tenuous," *id.* at 145, and the statute imposed burdens.¹⁵

Neither is *Waste Systems Corp. v. County of Martin*, 985 F.2d 1381 (8th Cir. 1993), persuasive authority. At the outset, the court overlooked the holding in *Maine v. Taylor*, 477 U.S. at 137-38, that a direct restriction of trade does not, by itself, render a law unconstitutional. 985 F.2d at 1385. The court also failed to give sufficient weight to the counties' valid health and safety interests in the ordinances at issue. The ordinances, rather than being mere "economic" measures, ensured the responsible and environmentally-sound disposal of local waste in accordance with the federal government's own priorities for disposal methods, *see EPA Agenda for Action* at 18-19, and permitted the development of local waste disposal capacity so that the counties could fulfill their traditional responsibilities for solid waste management. Additionally, the court apparently misunderstood both the significant difference between composting and landfilling and the burdens incurred by the county residents. 985 F.2d at 1387-88. Moreover, the officials involved in the litigation did not clearly set forth many benefits achieved by flow control. *Id.* at 1388-89. The Eighth Circuit ignored the genuine problems that local governments face in trying to meet their obligations for waste disposal and mistakenly labeled as "economic protectionism" the counties' attempts to address a very real problem having little to do with profit-making or economic competition.

In analyzing previous cases, this Court has stated that "[w]hat is crucial is [whether the regulation is an] attempt by one State to isolate itself from a problem common to many by

¹⁵ Even if this court were to strike down section 5 as violative of the Commerce Clause, the requirement of section 3 that all garbage originating within the Town be delivered to the transfer facility should be upheld. *Parker v. Brown*, 317 U.S. 341. Courts have upheld town or county flow control regulations. *Filiberto Sanitation*, 857 F.2d 913; *A.A. Mastrangelo, Inc. v. Department of Environmental Protection*, 90 N.J. 666, 449 A.2d 516 (N.J. 1982); *Browning Ferris Industries of Tennessee, Inc. v. Nashville*, 1991 WL 219383 (Tenn. Ct. App. Oct. 30, 1991).

erecting a barrier against the movement of interstate trade." *Philadelphia v. New Jersey*, 437 U.S. at 628; *Baldwin*, 294 U.S. at 527. This case does not implicate such concerns. Clarkstown is not "turning its back" on this problem by attempting to keep an undesirable good out of the town or limit access to disposal sites, *see e.g. Philadelphia v. New Jersey*, nor is it trying to "hoard" a natural resource within the town, *see e.g. Kansas Natural Gas*, 221 U.S. 229; *Pennsylvania v. West Virginia*, 262 U.S. 553 (1923). Clarkstown is merely directing the waste product of modern society to a centralized location so that the volume of solid waste is reduced, energy is conserved, and the environment less burdened.

CONCLUSION

Petitioners' claim is essentially that their New York based operation is less profitable as a result of Clarkstown's transfer station and ordinance. However, "[t]he Commerce Clause . . . does not elevate free trade above all other values," *Maine v. Taylor*, 477 U.S. at 151, nor have courts "ascribe[d] to the thesis that [a hauler] is constitutionally entitled to the least expensive interim solution to this pervasive waste disposal problem under the guise of Commerce Clause protection." *In re Waste Agreement*, 568 A.2d at 555. In light of garbage's potential hazards and negative value and in contrast to various states' attempts to ban the importation of garbage, flow control regulations will not foster parochial "jealousies and aggressions" among the states of the type that motivated the grant of the commerce power to Congress.¹⁶

Petitioners' claim would jeopardize recycling and resource recovery programs across the country as well as programs to reduce and safely dispose of solid and hazardous waste and

¹⁶ Ferrand, Records of the Federal Convention, Vol. II, p. 308; Vol. III, pp. 478, 547, 548; *see S. 2877*, 102d Cong., 2d Sess. (1992) (legislation introduced by Senators Coats and Baucus to curtail importation of garbage).

would also shackle state and local governments in their efforts to protect the health and environment of their communities.

For all the foregoing reasons, the judgment of the New York Supreme Court, Appellate Division, Second Department, should be affirmed.

Dated: New York, New York
August 19, 1992

Respectfully submitted

Attorneys for Amici Curiae

ROBERT ABRAMS,
*Attorney General of the
State of New York*

JERRY BOONE,
Solicitor General

ANDREA GREEN,
Deputy Solicitor General

JOHN J. SIPOS,*

GORDON J. JOHNSON,
Assistant Attorneys General

PAUL LLEWELLYN, *Legal Intern*
120 Broadway

New York, New York 10271

(212) 416-8473

Attorneys for the State of New York

* *Counsel of Record*

O. PETER SHERWOOD,
*Corporation Counsel of
the City of New York*

LEONARD J. KOERNER,
Chief Assistant Corporation Counsel

ELIZABETH ST. CLAIR,

HILARY BREST,

MARJORIE FOX,

ROBERT ORLIN,

Assistant Corporation Counsel

100 Church Street

New York, New York 10007

Attorneys for the City of New York

JONATHAN WOOD,

Assistant County Attorney

Tompkins County Attorney Office

125 East Court Street

Ithaca, New York 14850

MARTIN GOLD

LOUIS A. EVANS

Brown & Wood

One World Trade Center

New York, New York 10048

Attorneys for the New York State

Association of County Attorneys